

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD BLACK,)
)
 Plaintiff,)
)
v.) No. 09 C 2780
)
A TRANSPORT COMPANY, INC.,)
)
 Defendant.)

MEMORANDUM ORDER

A Transport Company, Inc. ("A Transport") has filed its Answer to the Second Amended Complaint ("SAC") brought against it by its ex-employee Richard Black ("Black"). This memorandum order is issued sua sponte because of some problematic aspects of that responsive pleading.

To begin, Answer ¶¶3, 5 and 11 involve partial or total invocation of the disclaimer provisions of Fed. R. Civ. P. ("Rule") 8(b)(5). Although those invocations are proper in form, what follows--"and therefore denies same"--is not. That is of course oxymoronic--how can a party that asserts (presumably in good faith) that it lacks even enough information to form a belief as to the truth of an allegation then proceed to deny it in accordance with Rule 11(b)? Accordingly the quoted phrase is stricken from each of those paragraphs of the Answer.

As for A Transport's ADs, several call for revision or elimination entirely. Here they are:

1. AD 2 is a brief assertion of the equivalent of a

Rule 12(b)(6) motion. But A Transport had essayed a full-blown Rule 12(b)(6) motion, together with a supporting memorandum of law, back in October--and this Court shot it down orally as ill-conceived back then. A Transport's position has not improved with age or brevity, and AD 1 is stricken.¹

2. AD 3 charges that Black's "claims are barred to the extent that they occurred beyond the applicable statute of limitations." "To the extent" is a telltale tipoff that a defendant has failed to comply with the notice pleading requirements that the federal system imposes on defendants as well as plaintiffs. If A Transport believes that it has some statute of limitations problems with the SAC, those must be better particularized--and meanwhile AD 3 is stricken as well.

3. That is equally true of AD 4. It too is stricken.²



Milton I. Shadur
Senior United States District Judge

Date: November 23, 2009

¹ Indeed, that second attempt could well be viewed as an invitation to the imposition of a Rule 11(c) sanction, except that this Court is generally disinclined toward such measures.

² No comment is made either way as to A Transport's other asserted ADs. If Black's counsel sees problems there as well, he is free to assert them.